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 10 UNITED STATES DISTRICT COURT

11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 FENG CHEN and GUI RUI GUAN) Case No: C07-04433 CRB
 13 Plaintiffs,) [PROPOSED] FIRST AMENDED
 14) COMPLAINT FOR DAMAGES AND
 15) DEMAND FOR JURY TRIAL:
 16 vs.) 1) Violation of California Labor Code
 17 GOLDEN EAGLE GROUP, INC. DBA) Section 510;
 18 PEKING PALACE, WENYING L LO, AND) 2) Violations of the Federal Fair Labor
 19 DOES 1-10) Standards Act;
 20) 3) Violation of California Labor Code
 21) Section 1197; and
 22 Defendants) 4) Violation of California Labor Code
 23) Section 226.7.
 24) 5) Violation of California Labor Code
 25) Section 201;
 1) 6) Violation of California Business and
 2) Professions Code Section 17200; and
 3) 7) Violation of California Labor Code
 4) Section 226; and

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 7 NATURE OF CLAIM

8 1. This is an action on behalf of FENG CHEN and GUI RUI GUAN whom had been
 9 employed on a salary basis by GOLDEN EAGLE GROUP, INC. dba PEKING PALACE
 10 during the last four years prior to the filing of this Complaint, seeking damages arising
 11 from employer's failure to pay overtime as required by the Fair Labor Standards Act and
 12 the California Wage Orders and statutes. Plaintiffs seek compensatory damages for
 13 unpaid wages under California Labor Code and Wage Orders, liquidated damages under
 14 29 U.S.C. §216(b), waiting time penalties under California Labor Code § 203, damages
 15 for inadequate pay statements under California Labor Code Section 226, and attorney's

1 fees, costs, pre judgment interest pursuant to California Labor Code § 1194(a) and 29
 2 U.S.C. § 216(b), and restitution under California Unfair Trade Practices Act under
 3 California Business and Professions Code § 17203.

4 **PARTIES**

5 2. At all times relevant herein, Plaintiff FENG CHEN is a resident of Napa, California, and
 6 Plaintiff GUI RUI GUAN is a resident of San Jose , California.
 7 3. According to belief and information, Defendant GOLDEN EAGLE GROUP, INC. is a
 8 corporation doing business in Napa County, California, and owns and operates a Chinese
 9 restaurant doing business as PEKING PALACE.
 10 4. According to belief and information, Defendants WENYING L LO and Does 1 to 5, at
 11 some relevant times, owned and operated a Chinese restaurant doing business as
 12 PEKING PALACE.
 13 5. Individual Defendants and DOES 1-10, at all times relevant herein, are, according to
 14 information and belief, officers, owners, or an employee of GOLDEN EAGLE GROUP,
 15 INC. and/or Chinese restaurant PEKING PALACE, having control over the Plaintiff's
 16 work condition and work situation.

17 **GENERAL ALLEGATIONS**

18 6. At all times relevant herein, Plaintiffs were employees of Defendants GOLDEN EAGLE
 19 GROUP, INC. and/or individual Defendants WENYING L LO and Does 1 to 5 doing
 20 business as PEKING PALACE, a restaurant doing business in Napa County, California.
 21 7. Plaintiffs were, according to information and belief, employees of Defendants acting in
 22 the normal course and scope of employment duties with Defendants.
 23 8. During the course of Plaintiffs' employment with Defendants, Plaintiffs regularly worked
 24 in excess of 8 hours per day and more than 40 hours per week.
 25 9. Plaintiffs were not paid required rate for overtime hours worked.

10. Plaintiffs did not perform "exempt" duties in his position with Defendants and thus were
11 not subject to any exemption under the Fair Labor Standards Act. The Plaintiffs' primary
12 job did not require them to exercise independent discretion and judgment or regularly
13 require invention or imagination in a recognized field of artistic endeavor more than fifty
14 percent of their working time.

15 11. At no time during the Plaintiffs' employment did Plaintiffs maintain any professional
16 license with the state or practice any recognized profession, nor did Plaintiffs exclusively
17 manage any division of GOLDEN EAGLE GROUP, INC. and/or PEKING PALACE
18 where they customarily and regularly exercised discretionary powers or perform services
19 of management. Plaintiffs did not directly supervise any an employee nor did they
20 participate in the development of general administrative policies of GOLDEN EAGLE
21 GROUP, INC. and/or PEKING PALACE

22 12. Individual Defendants WENYING L LO and Does 1 to 5, inclusive, are liable for the acts
23 of GOLDEN EAGLE GROUP, INC. as the alter egos of GOLDEN EAGLE GROUP,
24 INC. Recognition of the privilege of separate existence would promote injustice because
25 these individual defendants have in bad faith dominated and controlled GOLDEN
EAGLE GROUP, INC. Plaintiffs are informed and believe, and thereon allege, that
Defendants DOES 1 through 10, inclusive, have:

- 26 a. Commingled funds and other assets of GOLDEN EAGLE GROUP, INC. and
27 their own funds and other assets for their own convenience and to assist in
28 evading the payment of obligations;
- 29 b. Diverted funds and other assets of GOLDEN EAGLE GROUP, INC. to other than
30 corporate uses;
- 31 c. Treated the assets of the GOLDEN EAGLE GROUP, INC. as their own;

- d. Failed to obtain authority to issue shares or to subscribe to issue shares of GOLDEN EAGLE GROUP, INC.;
- e. Failed to maintain minutes or adequate corporate records of GOLDEN EAGLE GROUP, INC.;
- f. Failed to adequately capitalize or provide any assets to GOLDEN EAGLE GROUP, INC.; and
- g. Diverted assets from GOLDEN EAGLE GROUP, INC. to themselves to the detriment of creditors, including Plaintiffs.

COUNT ONE: VIOLATION OF CA LABOR CODE SECTION §510

FAILURE TO PROPERLY PAY OVERTIME WAGES

13. Plaintiffs re-allege and incorporate paragraphs 1-12 as if fully stated herein.
14. California Labor Code Section 501, applicable at all times relevant herein to Plaintiffs' employment by Defendants, provides that all an employee are entitled to payment at the rate of time and one half for hours in excess of 8 in one day, or 40 hours in one week, and double time for hours in excess of 12 in one day.
15. During the course of employment with Defendants, Plaintiffs regularly worked in excess of 8 hours a day and 40 hours per week, however Defendant's knowingly and willingly failed to pay Plaintiffs overtime wages as required by law.
16. California Labor Code Section 1194 provides that it is unlawful for employers not to make the required overtime payments identified in the preceding paragraph and that an employee not paid such payments can recover any monies owed by civil action.
17. Defendants therefore owe Plaintiffs overtime wages not properly paid to Plaintiffs, in amount to be determined at trial.
18. Defendants have failed and refused and continue to fail and refuse to pay Plaintiffs the amount owed.

1 19. Defendants' failure to pay Plaintiffs the required sum violates the provisions of Labor
 2 Code Sections 510 and 1194 and is therefore unlawful.
 3 20. Pursuant to Labor Code Section 1194(a), Plaintiffs request that the court award Plaintiffs
 4 reasonable attorney's fees and costs incurred by him in this action.

5 **COUNT TWO: VIOLATION OF THE FAIR LABOR STANDARDS ACT**
 6 **FAILURE TO PROPERLY PAY OVERTIME WAGES**

7 21. Plaintiffs re-allege and incorporate paragraphs 1-20 as if fully stated herein.
 8 22. At all relevant times herein, Plaintiff's employment was subject to the provisions of the
 9 Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 U.S.C. § 201, et seq. and
 10 Plaintiffs were individual employees subject to FLSA.
 11 23. The FLSA, 29 U.S.C. § 207 requires all an employee to be paid overtime for work
 12 performed in excess of forty hours per week, unless specifically exempted by the law.
 13 24. Although Plaintiffs were not so exempt during employment with Defendants, Defendants
 14 knowingly caused and permitted Plaintiffs to regularly work in excess of forty hours per
 15 week without paying Plaintiffs one and one half of their regular rate of pay.
 16 25. By not paying overtime wages in compliance with the FLSA, Defendants violated
 17 Plaintiffs' rights under the FLSA.
 18 26. As a direct and proximate result of Defendants' failure to pay proper wages under the
 19 FLSA, Plaintiffs incurred general damages in the form of lost overtime wages.
 20 27. Defendants intentionally, with reckless disregard for their responsibilities under the
 21 FLSA, and without good cause, failed to pay Plaintiffs proper wages, and thus
 22 Defendants are liable to Plaintiffs for liquidated damages in an amount equal to lost
 23 overtime wages, pursuant to 29 U.S.C. § 216(b) of the FLSA.
 24 28. Defendants therefore owe Plaintiffs the amount of overtime not properly paid to
 25 Plaintiffs, in an amount to be determined at trial.

1 29. Plaintiffs were required to retain legal assistance in order to bring this action and, as such,
 2 are entitled to an award of reasonable attorney's fees pursuant to 29 U.S.C. § 216(b) of
 3 the FLSA.

4 **COUNT THREE: VIOLATION OF CALIFORNIA LABOR CODE SECTION1197**

5 **FAILURE TO PAY MINIMUM WAGE**

6 30. Plaintiffs re-allege and incorporate paragraphs 1-29 as if fully stated herein.

7 31. California Labor Code § 1197 provides that it is unlawful to pay less than the minimum
 8 wage established by law.

9 32. At all times relevant herein, the applicable Industrial Welfare Commission Wage Order,
 10 provided for payment of a minimum wage of \$ 6.75 per hour.

11 33. Under the provisions of the Wage Order referred to above, Plaintiffs should have
 12 received \$6.75 for hours worked during the period employed with defendant, but were
 13 paid less, in an exact amount per hour to be determined at trial.

14 34. Defendants therefore owe Plaintiffs the difference between the amount of wages owed
 15 pursuant to the Wage Order and the amount actually paid to them, the exact amount of
 16 which will be determined at trial.

17 35. Defendants have failed and refused and continue to fail and refuse to pay Plaintiffs the
 18 amount owed.

19 36. Defendants' failure to pay Plaintiffs the sum required by the applicable Wage Order
 20 violates the provision of Labor Code Section 1197 and is therefore unlawful.

21 37. Pursuant to Labor Code Section 1194(a), Plaintiffs request that the court award Plaintiffs
 22 reasonable attorney's fees and costs incurred by him in this action.

COUNT FOUR: VIOLATION OF CALIFORNIA LABOR CODE SECTION 226.7**FAILURE TO PROVIDE MEAL AND REST PERIODS**

38. Plaintiffs re-allege and incorporate the allegations set forth in paragraphs 1-37 as if fully
4 stated herein.

5 39. At relevant times herein, Plaintiffs' employment was subject to the provisions of
6 California Labor Code §226.7, which requires employer to provide an employee a half-
7 hour meal period for every five hours worked, unless expressly exempt.

8 40. During his employment with Defendants, Plaintiffs worked in excess of five hours per
9 day, and were not provided a half-hour meal period as required by law.

10 41. For each time that Plaintiffs and other hourly an employee were not provided the required
11 meal and/or rest period, they are entitled to recover one additional hour of pay at each
12 employee's regular rate of compensation pursuant to California Labor Code section
13 226.7.

14 42. Plaintiffs are therefore entitled to payment, in an amount to be proven at trial, for each
15 meal period that Defendants failed to provide.

COUNT FIVE: VIOLATION OF CA LABOR CODE SECTION 201**FAILURE TO PAY WAGES DUE AND "WAITING TIME" PENALTIES**

18 43. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-42 as if fully stated
19 herein.

20 44. At the time Plaintiffs' employment with Defendants was terminated, Defendants owed
21 Plaintiffs certain unpaid wages in amount previously alleged.

22 45. Failure to pay wages owed at an employee's termination as required by Labor Code §201
23 subjects the employer the payment of a penalty equaling up to 30 days wages, as
24 provided for in Labor Code § 203.

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1 46. As of this date, Defendants have failed and refused, and continue to fail and refuse, to
2 pay the amount due, thus making Defendants liable to Plaintiffs for penalties equal to
3 thirty (30) days wages, in an amount to be determined at trial.

4 **COUNT SIX: VIOLATION OF CA BUSINESS AND PROFESSIONS CODE**

5 **SECTION 17200 UNFAIR BUSINESS PRACTICES**

6 47. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-46 as if fully stated
7 herein.

8 48. At all times relevant herein, Plaintiffs' employment with Defendants was subject to the
9 FLSA, California Labor Code and applicable Wage Orders promulgated by the California
10 Industrial Welfare Commission, which required all employees to be paid overtime for
11 work performed in excess of forty hours per week or eight hours per day, unless
12 specifically exempted by law.

13 49. At all times relevant herein, as the employer of Plaintiffs, Defendants were subject to the
14 California Unfair Trade Practices Act (California Business and Professions Code §
15 §17000 et seq.), but failed to pay the Plaintiffs overtime pay and premium pay for missed
16 meal periods as required by FLSA, and applicable California Labor Code and applicable
17 Wage Orders.

18 50. During the period Plaintiffs were employed with Defendants, Defendants failed to pay
19 Plaintiffs legally required overtime pay to which they were legally entitled, with
20 Defendants keeping to themselves the amount which should have been paid to Plaintiffs.

21 51. In doing so, Defendants violated California Unfair Trade Practices Act, Business and
22 Professions Code §17200, et seq. by committing acts prohibited by applicable California
23 Labor Code provisions, California Wage Orders, and the FLSA, thus giving Defendants a
24 competitive advantage over other employers and businesses with whom defendants were
25 in competition and who were in compliance with the law.

1 52. As a direct and proximate result of Defendants' violations and failure to pay the required
 2 overtime pay, the Plaintiffs' rights under the law were violated and the Plaintiffs incurred
 3 general damages in the form of unpaid wages in an amount to be determined at trial.

4 53. Defendants had been aware of the existence and requirements of the Unfair Trade
 5 Practices Act and the requirements of State and Federal wage and hour laws, but
 6 willfully, knowingly, and intentionally failed to pay Plaintiffs overtime pay due.

7 54. Plaintiffs, having been illegally deprived of the overtime pay to which he were legally
 8 entitled, herein seek restitution of such wages pursuant to the Business and Professions
 9 Code §17203 in an amount to be determined at trial.

10 **COUNT SEVEN: VIOLATION OF CALIFORNIA LABOR CODE SECTION 226**

11 **INADEQUATE PAY STATEMENTS**

12 55. Plaintiffs re-alleges and incorporates the allegations of paragraphs 1-54 as if fully stated
 13 herein.

14 56. California Labor Code Section 226 provides that all employers shall provide to an
 15 employee accurate and complete wage statements including, but not limited to, an
 16 accurate and current statement of all rates paid for all regular and overtime hours worked
 17 during the pay-period, a complete and itemized statement of deductions, net wages
 18 earned, the dates for which payment is being made, any and all applicable piece rates, and
 19 the current address and name of the employer.

20 57. California Labor Code Section 226 further provides that any employee suffering injury
 21 due to a willful violation of the aforementioned obligations may collect the greater of
 22 either actual damages or \$50 for the first inadequate pay statement and \$100 for each
 23 inadequate statement thereafter.

24 58. During the course of Plaintiffs' employment, Defendants consistently failed to provide
 25 Plaintiffs with adequate pay statements as required by California Labor Code §226.

1 59. Defendants failed to provide such adequate statements willingly and with full knowledge
 2 of his obligations under Section 226.

3 60. Defendants' failure to provide such adequate statements has caused injury to the
 4 Plaintiffs.

5 61. Plaintiffs are therefore legally entitled to recover actual damages caused by Defendants'
 6 failure to provide proper records, in an amount to be determined at trial.

7 62. Plaintiffs have incurred costs and fees in bringing this action and seeks to recover such
 8 costs under California Labor Code §226.

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Plaintiffs pray for the following relief:

11 1. For compensatory damages per California Labor Code §1194 for unpaid overtime wages
 12 in an amount to be determined at trial;

13 2. For liquidated damages per the FLSA equal to unpaid overtime wages in an amount to be
 14 determined at trial;

15 3. For compensatory damages for unpaid minimum and liquidated damages equal to the
 16 unpaid minimum wages;

17 4. For premium pay for misled meal period;

18 5. For restitution of unpaid overtime, minimum wage and missed meal period premium pay
 19 pursuant to California Business and Professions Code §17203 in an amount to be
 20 determined at trial;

21 6. For waiting time penalty damages of thirty days wages to each Plaintiff, pursuant to
 22 California Labor Code § 203 in an amount to be determined at trial;

23 7. For damages for inadequate pay statements pursuant to California Labor Code § 226 in
 24 an amount to be determined at trial;

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- 1 8. For pre-judgment interest of 10% on the unpaid overtime compensation and unpaid
- 2 salaries pursuant to California Labor Code §1194(a);
- 3 9. Plaintiffs ask the court to award reasonable attorney's fees pursuant to California Labor
- 4 Code §1194(a) and 29 U.S.C. §216(b) of the FLSA;
- 5 10. For costs of suit herein; and
- 6 11. For such other and further relief as the Court may deem appropriate.

7 Dated: December 21, 2007

8 DAL BON & WANG

9 By: _____
10 Adam Wang
11 Attorney for Plaintiffs
12 Feng Chen & Gui Rui Guan
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